



FEDERAL ELECTION COMMISSION
Washington, DC 20463

BY ELECTRONIC MAIL

December 20, 2021

Jonathan S. Berkon
Rebecca K. Mears
Perkins Coie LLP
700 Thirteenth Street, NW, Suite 600
Washington, DC 20006
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rmears@perkinscoie.com

RE: MUR 7682
Save America Fund and Edward Galvin
in his official capacity as treasurer

Dear Mr. Berkon and Ms. Mears:

On January 24, 2020, the Federal Election Commission notified your clients, Save America Fund and Edward Galvin in his official capacity as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. A copy of the Complaint was forwarded to your clients at that time.

On December 2, 2021, the Commission found, on the basis of the information in the complaint and information provided by your clients, that there is no reason to believe your clients violated 52 U.S.C. § 30125(e) and 11 C.F.R. § 300.61. Accordingly, the Commission closed its file in this matter as it pertains to your clients. The Factual and Legal Analysis explaining the Commission's finding is enclosed.

The Commission reminds you that the confidentiality provisions of 52 U.S.C. § 30109(a)(12)(A) remain in effect, and that this matter is still open with respect to other respondents. The Commission will notify you when the entire file has been closed.

If you have any questions, please contact Dominique Dillenseger, the attorney assigned to this matter, at (202) 694-1650 or ddillenseger@fec.gov.

Sincerely,

A handwritten signature in cursive script that reads "Jin Lee".

Jin Lee
Acting Assistant General Counsel

Enclosure
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Save America Fund **MUR 7682**
and Edward Galvin, in his official capacity
as treasurer

I. INTRODUCTION

The Complaint alleges that Honor Bound PAC (formerly known as Amy McGrath for Senate, Inc., and the principal campaign committee for 2020 U.S. Senate candidate Amy McGrath before its conversion into a multi-candidate political committee in 2021), and Chris Patton in his official capacity as treasurer (“Honor Bound”), through its agent, Mark Nickolas, the then-campaign manager for McGrath’s 2020 Senate campaign, knowingly and willfully solicited non-federal funds to Save America Fund and Edward Galvin in his official capacity as treasurer (“Save America Fund”), an independent expenditure-only political committee (“IEOPC”), in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”).¹ The Complaint is based on a public statement Nickolas made to the press about the formation of the IEOPC that allegedly encouraged potential donors to contribute to Save America Fund² Respondent contends that Nickolas’s statement does not constitute a solicitation but assert that in any event, the Complaint’s allegation of an impermissible solicitation of nonfederal funds does not apply to it since, as an IEOPC, it is not prohibited from soliciting such funds.³

¹ Compl. (Jan. 21, 2020).

² *Id.* ¶¶ 12-18.

³ Save America Fund Resp. at 3-4 (Mar. 13, 2020).

1 The Complaint alleges a violation of 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R. § 300.61,
2 which prohibits federal officeholders, candidates, and their agents from soliciting funds in connection
3 with a federal election that do not comply with federal source restrictions, amount limits, or reporting
4 requirements. Because Save America Fund is not an entity subject to the Act’s regulation of
5 solicitations of non-federal funds by candidates, however, the Commission finds no reason to
6 believe that Save America Fund and Edward Galvin in his official capacity as treasurer violated
7 52 U.S.C. § 30125(e) and 11 C.F.R. § 300.61.

8 **II. FACTUAL BACKGROUND**

9 On July 18, 2019, Amy McGrath registered as a candidate for U.S. Senate in Kentucky.⁴
10 Amy McGrath for Senate, Inc., was her principal campaign committee of Amy McGrath. and
11 Chris Patton is its treasurer.⁵ Mark Nickolas is McGrath’s former campaign manager.

12 Save America Fund filed a Statement of Organization as an IEOPC on December 24,
13 2019.⁶ Eric Hyers, who was the former campaign manager for Governor Andy Beshear of
14 Kentucky, founded Save America Fund.⁷ Fire Mitch Save America (“FMSA”) is “a project of
15 Save America Fund.”⁸ On January 6, 2020, Save America Fund filed an amended Statement of

⁴ Amy McGrath, Original Statement of Candidacy at 1 (Jul. 18, 2019).

⁵ Amy McGrath for US Senate, Original Statement of Organization (July 9, 2019). The Statement of Organization has been amended several times. Amended Statements of Organization (Aug. 28, 2019; Oct. 8, 2019; Nov. 16, 2019; Dec. 25, 2019; Jan.3, 2020; Jan. 16, 2020; Apr. 29, 2020); Honor Bound PAC, Amended Statement of Organization (Mar. 29, 2021).

⁶ Save America Fund, Statement of Organization (Dec. 24, 2019).

⁷ See Daniel Desrochers, *Former Andy Beshear Staffer Forms Super PAC to Raise Money for Amy McGrath*, LEXINGTON HERALD-LEADER (Jan. 7, 2020), cited in Compl. at 3; Zach Montellaro, *The Democratic Debate Squeeze*, POLITICO (Jan. 7, 2020), cited in Compl. at 3.

⁸ FIRE MITCH SAVE AMERICA, <https://www.firemitschsaveamerica.com/> (last visited Aug. 18, 2020), cited in Compl. at 2; Save America Fund Resp. at 1.

1 Organization listing its website address as www.firemitchsaveamerica.com.⁹ Save America
2 Fund describes itself on that website as “[t]he Super PAC dedicated to replacing Mitch
3 McConnell with Amy McGrath.”¹⁰

4 On January 7, 2020, FMSA’s Twitter handle posted its first tweet announcing Save
5 America Fund’s formation.¹¹ The same day, reporters interviewed Nickolas about Save America
6 Fund. According to an article published by *Politico*, Nickolas, identified as McGrath’s campaign
7 manager, was quoted as stating:

8 This is a big deal that Eric [Hyers] will lead this effort, given his recent success in
9 ousting the other unpopular Republican in Kentucky in a race that many didn’t
10 think was winnable. He knows this electorate better than anyone We very
11 strongly encourage donors to give to Eric’s group.¹²

12 The Complaint attaches screenshots from Save America Fund’s ActBlue donation page,
13 which Save America Fund and Hyers promoted on Twitter.¹³ On top of the donation pages is the
14 statement “Fire Mitch Save America” next to a photo of Senator McConnell, followed by
15 “Donate Now. Fire Mitch,” and a reprint of Nickolas’s above quote in the *Politico* article

⁹ Save America Fund, Amended Statement of Organization, FEC Form 1 (Jan. 6, 2020).

¹⁰ FIRE MITCH SAVE AMERICA, <https://www.firemitchsaveamerica.com/> (last visited Aug. 18, 2020).

¹¹ Compl. ¶ 10 (citing to Fire Mitch Save America (@fire_mitch), TWITTER (Jan. 7, 202, 09:02 AM), https://twitter.com/fire_mitch/status/1214547802686132226 (inaugural tweet); Fire Mitch Save America (@fire_mitch), TWITTER (Jan. 7, 2020, 09:30 AM), https://twitter.com/fire_mitch/status/1214555024744951808 (“We are Fire Mitch Save America. We want to see Mitch McConnell lose, we want to see Amy McGrath win and we’ve got the roadmap to do it.”)).

¹² Montellaro, *supra* note 7.

¹³ Compl., Exs 3, 4; Fire Mitch Save America (@fire_mitch), TWITTER (Jan. 8, 2020, 12:20 PM), https://twitter.com/fire_mitch/status/1214960192644952064 (including link to ActBlue donation page with reference code “retweet” attached as Exhibit 3 of the Complaint); Eric Hyers (@EricHyers), TWITTER (Jan. 7, 2020, 12:17 PM), <https://twitter.com/EricHyers/status/1214596998424399876> (including link to ActBlue donation page with reference code “fir_or_tw_ah” attached as Exhibit 4 of the Complaint).

1 encouraging donors to give to Save America Fund.¹⁴ The ActBlue donation pages, which are
 2 dated January 8, 2020, do not identify any limits to, or source restrictions on, contributions to
 3 Save America Fund.¹⁵

4 **III. LEGAL ANALYSIS**

5 The Act prohibits federal candidates and officeholders, their agents, and entities directly
 6 or indirectly established, financed, or maintained, or controlled by, or acting on behalf of federal
 7 candidates and officeholders, from soliciting funds in connection with a federal election “unless
 8 the funds are subject to the limitations, prohibitions, and reporting requirements of the Act.”¹⁶
 9 The Act limits contributions to non-authorized, non-party committees to \$5,000 in any calendar
 10 year.¹⁷ Although an IEOPC may accept unlimited contributions,¹⁸ federal officeholders and
 11 candidate may only solicit up to \$5,000 on behalf of such committee.¹⁹

12 As an IEOPC, Save America Fund may solicit and accept unlimited contributions from
 13 individuals, political committees, corporations, and labor organizations for the purpose of
 14 making independent expenditures.²⁰ Absent any allegations or information regarding
 15 coordination with a candidate, an authorized committee, or political party, Save America Fund

¹⁴ Compl., Exs 3, 4.

¹⁵ *Id.*

¹⁶ *See* 52 U.S.C. § 30125(e)(1)(A); *see also* 11 C.F.R. §§ 300.60, 300.61.

¹⁷ 52 U.S.C. § 30116(a)(1)(C).

¹⁸ *See SpeechNow.org v. FEC*, 599 F.3d 686, 696 (D.C. Cir. 2010) (*en banc*) (holding that contribution limits are unconstitutional as applied to individuals’ contributions to political committees that only make independent expenditures); Advisory Op. 2010-11 (Common Sense Ten) (“AO 2010-11”) (concluding that corporations, labor organizations, political committees, and individuals may each make unlimited contributions to IEOPCs).

¹⁹ *See* Advisory Op. 2011-12 (Majority PAC) at 3; Conciliation Agreement ¶¶ 7, 8, MUR 7048 (Cruz for President, et al.); Factual and Legal Analysis at 11, MURs 6563 and 6733 (Rep. Aaron Schock).

²⁰ *See* AO 2010-11.

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Factual and Legal Analysis

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1 was permitted to solicit and accept contributions in excess of the Act's amount limitations from
2 permitted sources. As there are no such allegations regarding coordination or respecting
3 improper sources, and the circumstances of this matter do not otherwise indicate coordination,
4 the Commission finds no reason to believe that Save America Fund violated 52 U.S.C.
5 § 30125(e)(1)(A) and 11 C.F.R. § 300.61.